American Indian Law Review

Volume 6 | Number 2

1-1-1978

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Introduction

Congressional Indian policy has suffered from the vacillation of national politics and has generally reflected the popular sentiment of the times.[1] The political tide flowed in favor of those favoring assimilation of Indians into the "national" culture duing the decade of the 1950's and on into the early part of the 1960's.[2] One of the chief means used by assimilationists was the discontinuance of the tribe as a legal entity. The official congressional policy of termination was established by House Concurrent Resolution 108 in 1953.[3] Under this resolution approximately 109 Indian tribes and bands were terminated and ceased to exist as legal entities.[4]

Public Law 280

Another expression of congressional disfavor with tribal organization was Public Law 280,[5] which mandatorily transferred civil and criminal jurisdiction over reservation Indians to five specific states and provided the mechanism for transfer of jurisdiction to other states.[6] The rationale expressed to support this act implied that the Indians were on a social parity with other state citizens and that they "should therefore be released from second-class citizenship as well as [from] the paternalistic supervision of the BIA."[7]

In actuality, there was an absolute lack of serious investigation of the social condition of the affected Indians to determine if they were in fact ready for integration.[8] Viewed in context, Public Law

1. Martone, *American Indian Tribal Self-Government in the Federal System: Inherent Right of Congressional License*, 51 NOTRE DAME LAW. 600, 608 (1976).
2. *Id.* at 616.
3. H.R. Con. Res. 108, Aug. 1, 1953, 67 Stat. B132.
4. Wilkinson & Biggs, *The Evolution of the Termination Policy*, 5 AM. INDIAN L. REV. 139, 151 (1977).
5. Act of Aug. 15, 1953, Pub. L. No. 83-280, ch. 505, 67 Stat. 588, *amending* ch. 53 of 18 U.S.C. to add § 1162 and ch. 85 of 28 U.S.C. to add § 1360. The five original states were California, Minnesota, Nebraska, Oregon, and Wisconsin. Alaska was added in 1958. Act of Aug. 8, 1958, Pub. L. No. 85-615, 72 Stat. 545.
6. Ericson & Snow, *The Indian Battle for Self-Determination*, 58 CALIF. L. REV. 445, 460 (1970).
7. Goldberg, *Public Law 280: The Limits of State Jurisdiction over Reservation Indians*, 22 U.C.L.A. L. REV. 535, 543 (1975).
8. *Id.* at 543.

280 was enacted because "assimilation [was] cheaper for the federal government and preferred by states that dislike[d] the presence of an Indian sovereignty within their borders . . . ."[9]

Public Law 280 was considered to be unsatisfactory in several key aspects by both the states and the Indians. There was no provision for prior Indian consent to state jurisdiction, nor was there provision for return of jurisdiction to the federal government if state control proved unworkable.[10] The affected states found that although they were granted the jurisdiction, the power to tax the Indian lands as a source of revenue to pay for the costs of exercising jurisdiction was withheld and no alternative federal financing was found to be forthcoming.[11]

Also at issue was the extent of the jurisdiction available to the states and their subdivisions and the protection afforded the Indians by the exception clauses. Officials desiring to expand local control tended to read the exception clauses narrowly as precluding only actual encumbrance of federally protected lands.[12] Conversely, those favoring the Indians, who were seeking to preserve the remnants of their former protected status, gave wider reading to the clauses and sought to exclude local regulation entirely.[13]

The "Encumbrance" Test

The first case to consider specifically the issue of local regulation of the use of trust lands and the possibility that such regulation constituted an encumbrance within the context of Public Law 280 was *Snohomish County v. Seattle Disposal Co.*[14] In that action the county sought to impose a local zoning ordinance to preclude the Seattle Disposal Company (a lessee of the Tulalip tribes) from using allotted Indian land for a refuse disposal site. The county argued alternatively that the lands in question were within the jurisdiction of Washington by either operation of the General Allotment Act or Public Law 280.[15] The county further argued (1) that the zoning ordinances did not constitute an encumbrance as disallowed within the exceptions to Public Law 280;

9. *Id.* at 536.
10. *Id.* at 558. Both defects were subsequently corrected (82 Stat. 77).
11. *Id.* at 551.
12. *Id.* at 583.
13. *Id.*
14. 70 Wash. 2d 668, 425 P.2d 22, *cert. denied*, 389 U.S. 1016 (1967).
15. *Id.* at 670, 671, 425 P.2d at 25.

(2) that a lessee should not be allowed the benefit of the special rights available to the Indians; and (3) that exemption of the Indian lands from zoning ordinances applicable to other lands in the county was a breach of the equal protection clause of the Constitution.[16]

The court denied each of these arguments. The equal protection argument was found invalid because the court considered the pending case an example of juxtaposed but differing regulation by different sovereigns, which is acceptable in a federal system.[17] The court also stated that regulation of an Indian lessee was an attempt to interfere with property indirectly and thus accomplish obliquely a federally prohibited control.[18] The jurisdiction argument was predicated on a provision of the General Allotment Act of 1887 which provided that alloted lands would be state-controlled after a 25-year trust period. This argument was dismissed due to the inapplicability of that Act to the particular Washington lands in question.[19]

The court agreed that Washington did have the jurisdiction over Indians provided by Public Law 280 but then examined the exception clause of that law to determine if the pending case fell within the purview of one of the exceptions. The court found that the ordinance in question did constitute an encumbrance on the land within the meaning of Section 1360 of Title 28 of the United States Code.[20] In reaching this decision, the court used a definition of encumbrance from the case law of Washington which provided that an encumbrance was any "burden upon land depreciative of its value, such as lien, easement, or servitude, which, though adverse to the interest of the landowner, does not conflict with his conveyance of the land in fee."[21] The ordinance in question was found to diminish the value of the land in question and, therefore, to constitute an encumbrance.[22] The judgment of the district court was affirmed for the defendant Seattle Disposal Company.

16. *Id.* at 672, 673, 425 P.2d at 26, 27.
17. *Id.* 673, 674, 425 P.2d at 27.
18. *Id.* at 673, 425 P.2d at 26.
19. *Id.* at 670, 671, 425 P.2d at 25.
20. *Id.* at 672, 425 P.2d at 26.
21. *Id.* Definition of encumbrance from Hobb v. Severence, 32 Wash. 2d 159, 167, 201 P.2d 156, 160 (1948). The normal rules of construction would require that the state use the federal definition of the term rather than as in this case, the definition used by the state. M. PRICE, LAW AND THE AMERICAN INDIAN 281 (1973).
22. Snohomish County v. Seattle Disposal Co., 70 Wash. 2d 668, 672, 425 P.2d 22, 26, *cert. denied*, 389 U.S. 1016 (1967). In the dissent Judge Hale argued for a more restrictive interpretation of encumbrance as "a burden on the land and affecting the title thereto or one impairing the power of alienation such as a mortgage, lien, easement, lease, or other disability to fee ownership." *Id.* at 28.

The question of an encumbrance on Indian lands was considered by the California courts in the case of *People v. Rhoades* in 1970.[23] The court here considered the applicability of a state law requiring a firebreak around an inhabited structure in a forested area to an Indian living on reservation lands.[24] In examining this question, the court found that the law protected a legitimate state interest in the preservation of its forest lands.[25] The court found that this was not applied in a discriminatory manner and that the requirement that the defendant comply with the law did not constitute an encumbrance on the land.[26] In reaching this decision, the court used substantially the same definition of "encumbrance" as had been applied in the *Snohomish* case. However, the court then proceeded to disregard the broad interpretation given to the language in *Snohomish* and to construe the term narrowly.[27] The judicial construction maxim that laws affecting Indians will be construed to the Indians' benefit was discussed by the court in the consideration of the term "encumbrance." However, this maxim was completely disregarded in the narrow, unfavorable construction of the term given by the court.[28]

In *Rincon Band of Mission Indians v. County of San Diego*,[29] the federal district court considered the validity of the application of a county gambling ordinance to reservation lands. This contest arose when the Indians sought to establish a card house where traditional games of chance could be played on tribal lands.[30] The Rincon raised three arguments to preclude application of this ordinance. First, the tribe objected to the ordinance because it was not a general statute as required by Public Law 280. The court considered this question in the context of *Snohomish* and found that implicit in the result of that case was the assumption that local ordinances qualified as laws of the state.[31] The reference to "local authorities" and the intent of the act were found to "suggest that local authorities would assume the same role in relation to Indian

23. 12 Cal. App. 3d 720, 90 Cal. Rptr. 794 (1970), *cert. denied*, 404 U.S. 823 (1971).

24. *Id.*, 90 Cal. Rptr. at 795. Although the case involves the application of state law rather than a local ordinance, the case established the encumbrance test as a measure for California courts and was heavily cited in later cases where a local ordinance was at issue.

25. *Id.*, 90 Cal. Rptr. at 797.

26. *Id.*, 90 Cal. Rptr. at 797.

27. Hacker, Meier & Pauli, *State Jurisdiction over Indian Land Use: An Interpretation of the "Encumbrance" Savings Clause of Public Law 280*, 9 LAND & WATER L. REV 421, 435 (1974).

28. *Id.*

29. 324 F. Supp. 371 (S.D. Cal. 1971).

30. *Id.* at 373.

31. *Id.* at 374.

citizens as they occupy with respect to other citizens of the state."[32] The language of the statute was considered by the court, as was the possibility that the language might have been intended to preclude application of local ordinances.[33] However, the court found that possibility inconsistent with the purpose of the act and indicated that if such was the intent of Congress, the language would have clearly expressed that desire. On the contrary, the intent of Congress was found to be to preserve the "customary meaning of the phrase 'law of the state' as it is usually interpreted."[34] The court dismissed the argument as contradicting the congressional intent of the statute to make the Indians "full and equal citizens."[35]

The second contention of the Rincon was that the ordinance was an encumbrance. The court rejected the broad definition of encumbrance as applied by the Washington court in *Snohomish* and asserted that a gambling ordinance would not be an impermissible restriction even if such a test was used.[36] The use of the term in conjunction with alienation and taxation was seen as an indication that Congress intended these words to protect the Indian from his own folly and from manipulation by swindlers. The regulation admittedly restricted the Indians from what could have been a profit-making activity, but the restriction was considered justified as a legitimate exercise of the police power of the state. The restricted view of the California court (the *Rhodes* decision)[37] which excluded criminal ordinances from consideration as encumbrances was accepted by the court.[38] The ordinance in question, although admittedly restrictive of Indian land usage, placed no restrictions on the land itself.[39]

In the last argument, the plaintiff Indians sought to preclude application of the ordinance because it was inconsistent with federal law.[40] The court responded to this argument by asserting that Public Law 280 had superseded earlier regulations and laws and

32. *Id.* at 375. "The criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory" (18 U.S.C. § 1162).

33. *Id.* The RESTATEMENT OF CONFLICTS § 2b was quoted in support of this interpretation.

34. *Id.*

35. *Id.* at 374.

36. *Id.* at 376.

37. People v. Rhoades, 12 Cal. App. 3d 720, 90 Cal. Rptr. 794 (1970), *cert. denied*, 404 U.S. 823 (1971).

38. Rincon Band of Mission Indians v. County of San Diego, 324 F. Supp. 371, 377 (S.D. Cal. 1971).

39. *Id.* at 376.

40. *Id.* at 377.

that the tribe had only residual sovereignty which was not equal to state law.[41] The court held that the gambling ordinance was in full force on the reservation.

The propriety of a possessory interest tax assessed against the lessee of Indian reservation lands was the issue in *Palm Springs Spa, Inc. v. County of Riverside*,[42] which was decided in 1971. The land in question was trust land held for the Agua Caliente Indians which had been leased for a business venture. The county assessed a tax against the leasehold interest amounting to $264,000 cumulatively. The defendant county, while admitting to have no authority to tax the underlying fee, maintained that the tax in question was sufficiently remote and indirect to be permissible under federal law.[43] The plaintiff asserted constitutional arguments of preemption, the commerce clause, and illegal taxation of federal property.[44] Each of these arguments was found to be unpersuasive. The court found that the tax did not restrict tribal sovereignty even though the tribe already had a similar tax on the property, reasoning that such multiple taxation was common in a federal system.[45]

The question of whether the tax might constitute an impermissible encumbrance on Indian lands was briefly considered by the court. The court reasoned that a possessory interest tax is assessed only against the leaseholder and may be enforced only by seizure and sale of the possessory interest. The court stated that the tax is not secured by the underlying fee interest and cannot therefore constitute an encumbrance on that fee.[46] The ordinance was also impliedly found to be a law of "general application" as required by Public Law 280.[47] The court found that Public Law 280 provided a jurisdictional base for the imposition of the tax and that the county had acted within the scope of that authorization.

In 1972 the Agua Caliente Band of Mission Indians sought a declaration to the effect that the city of Palm Springs could not ap-

41. *Id.* at 378.

42. 18 Cal. App. 3d 372, 95 Cal. Rptr. 879 (1971). Cases on appeal before the Ninth Circuit since *Palm Springs Spa* have considered the possessory interest tax to be a state tax imposed by California law (CAL. REV. & TAX CODE § 107). The court has followed the rationale of Oklahoma Tax Comm'n v. Texas County, 336 U.S. 342 (1949), and has held that non-Indian leases are not immune from taxation. *See also* Fort Mojave Tribe v. San Bernadino County, 543 F.2d 1253, 1257 (9th Cir. 1976), *cert. denied*, 430 U.S. 983 (1977); Agua Caliente Band of Mission Indians v. County of Riverside, 442 F.2d 1184, 1187 (9th Cir. 1971), *cert. denied*, 405 U.S. 933 (1972).

43. *Id.*, 95 Cal. Rptr. at 881.

44. *Id.*, 95 Cal. Rptr. at 882, 883.

45. *Id.*, 95 Cal. Rptr. at 884.

46. *Id.*, 95 Cal. Rptr. at 884.

47. *Id.*, 95 Cal. Rptr. at 882.

ply its zoning ordinance to tribal lands.[48] In the opinion of the court, the plaintiff's contentions were grouped as relating to legality of incorporation of Indian lands into the city, the lawfulness of the application of zoning ordinances to Indian lands, and the constitutionality of Public Law 280. The court found no irregularity in the inclusion of the Indian lands as a portion of Palm Springs. The court failed to differentiate between what was simply federal property and what was Indian trust lands, and considered to be controlling a California state law which provided for incorporation of federal lands into cities.[49]

The court further found nothing to preclude application of county zoning ordinances to trust lands and that Public Law 280 could be considered as specific authority for that application.[50] The court reviewed the encumbrance test as previously applied in some detail, tracing its development from the broad interpretation of *Snohomish* to the restricted definition of *Rhoades* and *Rincon.* The court favored the latter approach, citing the plenary authority of Congress over the Indians and the absence of any illegal interference with tribal sovereignty to support that approach.[51]

The question of the constitutionality of Public Law 280 was evaluated on the basis of a reasonable relationship to a proper governmental objective. The court found that Congress had adopted the policy of protection of the Indians as its traditional policy objective and that the delegation of authority to the states under Public Law 280 was a logical progression of the long-range objective of integrating the Indians into society.[52] The court held that the incorporation of Indian lands into the city was legally permissible and denied the request of the Agua Caliente for declaratory relief.

Rincon Band of Mission Indians v. County of San Diego was heard by the Ninth Circuit Court of Appeals in March of 1974.[53] Consolidated with *Rincon* were two other cases involving application of county ordinances to Indian activities on reservation lands.

In *Ricci v. County of Riverside* the plaintiff appealed from an order of the federal district court denying her an injunction against

48. Agua Caliente Band of Mission Indians' Tribal Council v. City of Palm Springs, 347 F. Supp. 42, 43 (C.D. Cal. 1972), *vacated and remanded* by Ninth Circuit Court of Appeals in an unpublished order Jan. 24, 1975.

49. *Id.* at 46.

50. *Id.* at 48.

51. *Id.* at 50.

52. *Id.* at 51.

53. Rincon Band of Mission Indians v. County of San Diego, 495 F.2d 1 (9th Cir. 1974), *cert. denied,* 419 U.S. 1008 (1974).

the county to bar enforcement of a county building ordinance requiring compliance with a building code and the purchase of a building permit.[54] At the time of the initial action, the plaintiff's husband was building a home for his family on reservation lands and was threatened with criminal prosecution if he failed to comply with the ordinance. The district court decided in this case that Ricci was entitled to a permanent injunction against the county because there was no notice as to the applicability of the ordinance to the reservation, but the court also upheld the right of the county to enforce local ordinances on the reservation.

The third case presented for consideration by the court was *Madrigal v. County of Riverside.*[55] In this case the plaintiff sought an injunction to block enforcement of a temporary restraining order issued against a lessee of the plaintiff. Ms. Madrigal had leased to another tribal trust lands assigned to her for the purpose of organizing an Indian festival, and the county had obtained the restraining order to stop preparation for the activity until county ordinances requiring permits were complied with. The district court found that Public Law 280 conferred the necessary jurisdiction of the county and that the county had properly used that jurisdiction.

The Ninth Circuit did not reach the issue of county jurisdiction over reservation lands. Rather, the court found the threshold jurisdictional issues to be determinative in all three cases. In *Rincon,* the court considered that as no member of the tribe had actually been prosecuted under the gambling ordinance, no case or controversy existed which was sufficient to meet the requirements of Article III of the Constitution.[56] The court found in *Ricci* that because there had been no further prosecution by the county, there was no "substantial controversy of sufficient immediacy and reality to warrant consideration" and that the issue was moot.[57] The court again found the jurisdictional issues determinative in *Madrigal.* Here the plaintiff claimed jurisdiction because of a violation of civil rights or, alternatively, because of a federal question. The court ruled that no conspiracy had been proven which would establish jurisdiction under the Civil Rights Act,[58] and that there was no proof of deprivation of rights sufficient to provide a federal question.[59] The decision rendered by the district court dismissing the complaint was affirmed.

54. *Id.* at 6.
55. *Id.* at 8.
56. *Id.* at 6.
57. *Id.* at 7.
58. *Id.* at 11.
59. *Id.* at 12.

The encumbrance test was a product of judicial interpretation of the exception specified by Congress in Public Law 280. In *Snohomish*, the Washington court accepted a broad definition which was most favorable to Indian interests and which saw even remote intrusions as encumbrances.[60] The California District Court in *Rhoades* accepted the validity of the test but expressly refused to endorse the broad definition of encumbrance found in *Snohomish*.[61] The federal district court considered the encumbrance test valid but also refused to accept the broad definition of *Snohomish* (initially in *Rincon*).[62] The case law dealing with encumbrances could have equally well supported the broad interpretation of this principle.[63] Likewise, an interpretation more heavily reliant upon a detriment of beneficial use concept would probably have provided greater support for the Indian case.[64]

The "Laws of General Application" Test

The delegation of jurisdiction over Indians to the states was accomplished in the First Session of the 83d Congress in 1953.[65] Congress provided for the amendment to Chapter 53, Title 18, Section 1162, allowing the transfer of criminal jurisdiction. The amendment specified that "the criminal laws of such state shall have the same force and effect within such Indian country as they have elsewhere within the state...."[66] State civil jurisdiction was established by the amendment of Chapter 85, Title 28, Section 1360. The provisions of the amended section stated that "those civil laws of such state that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the state...."[67] The extent of the consideration given by the courts to these two sections of the Code varied in the preceding cases, and the courts were not uniform in their interpretation of how these statutes should be applied. Generally, the courts gave little weight

60. Snohomish County v. Seattle Disposal Co., 70 Wash. 2d 668, 425 P.2d 22 (1967), *cert. denied*, 389 U.S. 1016 (1967).

61. People v. Rhoades, 12 Cal. App. 3d 720, 90 Cal. Rptr. 94 (1970), *cert. denied*, 404 U.S. 823 (1971).

62. Rincon Band of Mission Indians v. County of San Diego, 324 F. Supp. 371 (S.D. Cal. 1971).

63. Cree, *The Extension of County Jurisdiction over Indian Reservations in California: Public Law 280 and the Ninth Circuit*, 25 HASTINGS L.J. 1451, 1499 (1974).

64. *Id.*

65. Act of Aug. 15, 1953, ch. 505, 67 Stat. 588, *amending* 18 U.S.C. §§ 1151, 1162; 28 U.S.C. 1331, 1360.

66. *Id.*

67. *Id.*

in their decisions to this interpretive process and apparently were confident that county ordinances were to be considered a permissible means of regulating reservation lands.

In *Capitan Grande Band of Mission Indians v. Helix Irrigation District*, the Ninth Circuit Court of Appeals considered an appeal from an interlocutory order denying a motion to dismiss on the grounds of expiration of the California statute of limitations.[68] The Capitan Grande band had filed the action seeking damages and declaratory relief against the California Irrigation District for alleged wrongs committed during the construction and operation of a water works project on reservation land. The case was decided in favor of the appellant Indian tribe, the court ruling that the appropriate statute of limitations for this case was that provided by federal law. Within the opinion, the court discussed the jurisdiction afforded the states under Public Law 280. The court paid particular attention to the legislative history of the Act. It emphasized, in a quotation from a House Report, verbiage specifying "laws . . . of general application" and inferred *that* to be the standard for judicial interpretation.[69] The court cited *Rincon* and *Agua Caliente* as examples of areas where Congress might have intended to extend state police power. However, later in the same paragraph, the court again quoted from the House Report, this time emphasizing language which clearly indicated an intent to exclude from state jurisdiction cases involving trust or restricted Indian lands.[70]

Approximately eight months afer the *Capitan Grande* case,[71] the Ninth Circuit squarely considered the issue of county jurisdiction over Indian trust property. This question was the central factor in *Santa Rosa Band of Indians v. Kings County*.[72] The court here reviewed an appeal from a decision of the district court in which that court had granted declaratory and injunctive relief against the defendant county to prevent enforcement of county zoning ordinances on the reservation lands.[73] The controversy arose when the county sought to enforce a county ordinance restricting the use of mobile homes as residences.

68. Capitan Grande Band of Mission Indians v. Helix Irrigation Dist., 514 F.2d 465 (9th Cir. 1975).

69. *Id.* at 468.

70. *Id.*

71. *Id.* at 465.

72. Santa Rosa Band of Indians v. Kings County, 532 F.2d 655 (9th Cir. 1975), *cert. denied*, 429 U.S. 1038 (1977).

73. Opinion of district court not reported. Santa Rosa Band of Indians v. Kings County, CIV. No. F-836 (E.D. Cal. Oct. 12, 1973).

The court prefaced its discussion of the issues of the case with a discussion of the jurisdiction granted the states under Public Law 280. The inherent power of the state to exercise concurrent jurisdiction was preempted by extensive federal regulatory activity in Indian law. The court said that the legislation in the area left little doubt that Congress intended the states to have only that power over the Indians as was specifically granted.[74] In the final analysis, the court found that the power of the states to regulate Indians as granted by Public Law 280 was specifically as delineated in the Act with all other jurisdiction reserved to either the federal government or the tribes.[75]

In the context of this interpretation of the powers granted under Public Law 280, the court then proceeded to analyze the key issue of the case. The basic concept established by the court at the outset of the discussion was that county ordinances were not state laws of general application.[76] The court stated that the language of Section 1360 of Title 28 of the United States Code could be read either as restricting state jurisdiction to civil laws of state wide application as adopted by the state legislature or, by admittedly strained interpretation, as inclusive of local ordinances. The court found that the restrictive reading of Public Law 280, that is, state laws only, was more consistent with Congress' trust obligation. Although Congress could legally repudiate this obligation, the court determined that this was not the intent of the passage of Public Law 280.[77] An extension of local regulation of Indians was found to be inconsistent with tribal self-determination and seriously detrimental to the promotion of tribal economic self-sufficiency.[78] The court refused to accept an argument that the Act was assimilationist in intent and announced that the restrictive construction was consistent with the current congressional policy.[79] The court stated that exclusion of local regulation was mandated by existent federal policies, and furthermore, if an issue was of sufficient importance to warrant state interest, it could be brought within the scope of state control by state legislative enactment.

After the court rejected local regulation as inconsistent with the general application test, it went on to hypothesize that even if the

74. Santa Rosa Band of Indians v. Kings County, 532 F.2d 655, 658 (9th Cir. 1975), *cert. denied*, 429 U.S. 1038 (1977).
75. *Id.*
76. *Id.* at 659.
77. *Id.* at 660.
78. *Id.* at 661.
79. *Id.*

county ordinance in question had met that criterion, it would have been found to be an unacceptable encumbrance.[80] Secretarial regulations deny the states the right to impose requirements on trust lands which are inconsistent with federal law, and although state zoning is considered permissible under these rules, application of similar county ordinances is specifically precluded. The court found that absent a special grant of jurisdiction to the state by Congress, the states remain unable to regulate trust lands.[81] The term "encumbrance" was viewed by the court as not simply a restriction on alienation of the fee, but rather as any hindrance which depreciates the "value, use and enjoyment of the land."[82] Such an interpretation was found to be consistent with the traditional canon of judicial construction which requires resolution of questions, where doubt exists, in favor of the Indians.

Conclusion

The applicability of local laws to Indian lands has been a matter of considerable concern in the courts of the Ninth Circuit because of the proximity of Indian lands to developed urban areas, particularly in California. The problem was further magnified by the uncertainty of the scope of the jurisdiction granted by Public Law 280. When the matter was first considered before the courts, there was a presumption that the local laws were applicable. The courts considered the only restriction on the imposition of these laws to be that they not encumber the land. The main preoccupations of the courts in the early cases were those of defining the parameters of "encumbrance" and establishing how broad or narrow the test would be. In *Rincon* the "laws of general application" language was interpreted to mean only that Indians were to be assured treatment equal with all other citizens.[83] In *Agua Caliente*, the court viewed this language as restricting local jurisdiction only to the extent that such jurisdiction was inconsistent with federal treaties, agreements, and statutes.[84] The court adopted a firmer position in *Capitan Grande*, recognizing that the laws of general application language constituted a significant restriction.[85] The

80. *Id.* at 664.
81. *Id.* at 667.
82. *Id.*
83. Rincon Band of Mission Indians v. County of San Diego, 324 F. Supp. 371, 375 (S.D. Cal. 1971).
84. Agua Caliente Band of Mission Indians' Tribal Council v. City of Palm Springs, 347 F. Supp. 42, 48 (C.D. Cal. 1972).
85. Capitan Grande Band of Mission Indians v. Helix Irrigation Dist., 514 F.2d 465, 468 (9th Cir. 1975).

Ninth Circuit developed a definitive stand on the issue in *Santa Rosa.*[86] That court now clearly stands on the literal language of the statute and holds that local ordinances are not state laws of general application and are therefore inapplicable when dealing with Indians on federally reserved lands. The reading of the statutory language now used by the court precludes local regulation of activities of the Indians on their lands. This position, if maintained by the court, will preserve the right of the Indians to develop their lands in accordance with their economic needs and cultural traditions. Furthermore, this interpretation is consonant with recent congressional acts, particularly the recently adopted policy of Indian self-determination and with the complete congressional rejection of the assimilationist philosopy of the 1950's. The Supreme Court in *Bryan v. Itasca County*[87] quoted from the *Santa Rosa* opinion and stated that the courts "are not obligated in ambiguous instances to strain to implement [an assimilationist] policy Congress has now rejected, particularly where to do so will interfere with what is, after all, an ongoing relationship."

86. Santa Rosa Band of Indians v. Kings County, 532 F.2d 655, 660 (9th Cir. 1975), *cert. denied*, 429 U.S. 1038 (1977).

87. 426 U.S. 373, 388 (1976), *quoting from* Santa Rosa Band of Indians v. Kings County, 532 F.2d 655, 663 (9th Cir. 1975).